

## Ashton Zylstra

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**From:** Ashton Zylstra  
**Sent:** Thursday, January 30, 2020 5:57 PM  
**To:** Lewis, James; Fredrickson, John  
**Cc:** Cary Hansel  
**Subject:** RE: Hulbert v. Sgt. Pope, et al.

Dear Jim and John,

Thank you for meeting with me in-person at John's office this afternoon.

To summarize our discussion regarding the deposition of Lt. Governor Rutherford, we discussed whether you could make the Lt. Governor available for deposition and you indicated that you do not have the authority to do so. With that in mind, I let you know that we will proceed with filing a Motion to Compel. We discussed whether any documents might exist that could be produced as an alternative to a deposition with the Lt. Governor, but as we discussed the possibility only in the hypothetical and no evidence was provided that such documents exist, I advised that we would proceed with the Motion to Compel and consider any possible alternatives only if, and when, any such documents are found.

In regards to the redacted documents produced on December 23, 2019, we discussed our intention to file a separate Motion to Compel seeking access to fully unredacted copies, or, in the alternative, an attorneys' eyes only review followed by motions argued under seal. My understanding from our conversation is that you are unable at this time to agree to unredact the emails or agree to the attorneys' eyes only review, but that you will discuss the issue with Rob early next week. In addition, we discussed the deficiencies of the privilege log but were unable to reach any mutually agreeable way to resolve the issue.

Finally, we discussed the emails that have not been produced as required pursuant to the subpoena served on the State. You told me that despite being served the subpoena on September 5th, and agreeing to search parameters with Cary on November 8th, you did not receive the results from the search until last Friday, January 24th. You advised me that you have so far reviewed half of one file, out of a total of three files, which took about three hours total to review and contained approximately 80 pages of documents.

We discussed your proposition of limiting the search parameters from thirty days to nine days, spanning from February 5, 2018 to February 14, 2018. You advised me that if we were unable to agree to narrow the time period, your review of the remaining documents would take approximately 30 days.

Cary and I discussed your proposition after the meeting today, and we are unable to agree to limit the search for the reasons I explained during the meeting this afternoon. Further, we are unable to agree to another 30 days for production of the documents, given the extensive period of discovery so far. You were unable to tell me how many documents are in each file or whether the second and third files are larger or smaller than the first, so we must conclude that the files are of roughly similar size. Given that reviewing half of a file took approximately three hours, our expectation is that the remaining two and a half files should take approximately fifteen hours to review. As you indicated that you are able to spend three to four hours reviewing each business day, we would expect the review to take no longer than one business week, not thirty days.

As tomorrow is the end of discovery, we would like to move to resolve the outstanding discovery issues as quickly as possible. With that in mind, would you be willing to consent to a Motion for Extension of Time to extend the conclusion of discovery to 35 days past the last to occur of either (1) the final production voluntarily produced or (2) the final



production order by the court? We would like to request 35 days after the last production, however produced, to permit us five days to review the production and thirty days to serve any further motions needed.

Because of the impending conclusion of discovery, our timeline to prepare and serve the two Motions to Compel discussed in our meeting today will be much shorter than the timeline I initially mentioned. We will be moving towards serving both Motions to Compel to you by the end of the day tomorrow to correspond with the final day of discovery. As we were unable to agree on any of the issues we discussed during the in-person meeting, we feel that it is appropriate to proceed with both motions at this time.

If anything arises that changes any of the above, please let us know. As I offered in the meeting today, I am happy to meet either in person or by phone at any other time to discuss any of the outstanding issues with Rob in attendance, but as he does not represent a party in the case Cary and I do not feel that it is appropriate to delay serving the motions to compel pending any response or further input from Rob.

Best regards,  
Ashton Zylstra

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**From:** Ashton Zylstra <azylstra@hansellaw.com>  
**Sent:** Thursday, January 30, 2020 10:40 AM  
**To:** Robert A. McFarland -DNR- <roberta.mcfarland@maryland.gov>; Lewis, James <jlewis@oag.state.md.us>  
**Cc:** Fredrickson, John <john.fredrickson@maryland.gov>; Cary Hansel <Cary@hansellaw.com>  
**Subject:** Re: Hulbert v. Sgt. Pope, et al.

Thank you for confirming, Jim. Bob, that is fine with us.

Jim and John, I look forward to meeting with you both this afternoon.

Best regards,  
Ashton Zylstra

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**From:** Robert A. McFarland -DNR- <[roberta.mcfarland@maryland.gov](mailto:roberta.mcfarland@maryland.gov)>  
**Sent:** Thursday, January 30, 2020 10:26:42 AM  
**To:** Lewis, James <[jlewis@oag.state.md.us](mailto:jlewis@oag.state.md.us)>  
**Cc:** Ashton Zylstra <[azylstra@hansellaw.com](mailto:azylstra@hansellaw.com)>; Fredrickson, John <[john.fredrickson@maryland.gov](mailto:john.fredrickson@maryland.gov)>; Cary Hansel <[Cary@hansellaw.com](mailto:Cary@hansellaw.com)>  
**Subject:** Re: Hulbert v. Sgt. Pope, et al.

Since Jim Lewis will be attending on behalf of Sgt Pope, I will not be in attendance. Thanks.

On Thu, Jan 30, 2020 at 9:52 AM Lewis, James <[jlewis@oag.state.md.us](mailto:jlewis@oag.state.md.us)> wrote:

Ashton,

I will be attending in person.

Jim

From: Ashton Zylstra <[azylstra@hansellaw.com](mailto:azylstra@hansellaw.com)>  
Sent: Thursday, January 30, 2020 9:49 AM



To: McFarland, Robert <[roberta.mcfarland@maryland.gov](mailto:roberta.mcfarland@maryland.gov)>  
Cc: Fredrickson, John <[john.fredrickson@maryland.gov](mailto:john.fredrickson@maryland.gov)>; Lewis, James <[jlewis@oag.state.md.us](mailto:jlewis@oag.state.md.us)>; Cary Hansel <[Cary@hansellaw.com](mailto:Cary@hansellaw.com)>  
Subject: Re: Hulbert v. Sgt. Pope, et al.

Good morning everyone,

We received the notice that Jim filed his appearance this morning. Jim, could you please confirm that you will be attending the meeting this afternoon at 2pm, either in person or by phone? Thank you!

Best regards,  
Ashton Zylstra

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From: Ashton Zylstra <[azylstra@hansellaw.com](mailto:azylstra@hansellaw.com)><mailto:[azylstra@hansellaw.com](mailto:azylstra@hansellaw.com)>>  
Sent: Tuesday, January 28, 2020 1:09:10 PM  
To: Robert A. McFarland -DNR- <[roberta.mcfarland@maryland.gov](mailto:roberta.mcfarland@maryland.gov)><mailto:[roberta.mcfarland@maryland.gov](mailto:roberta.mcfarland@maryland.gov)>>  
Cc: John Fredrickson -DGS- <[john.fredrickson@maryland.gov](mailto:john.fredrickson@maryland.gov)><mailto:[john.fredrickson@maryland.gov](mailto:john.fredrickson@maryland.gov)>>;  
[jlewis@oag.state.md.us](mailto:jlewis@oag.state.md.us)<mailto:[jlewis@oag.state.md.us](mailto:jlewis@oag.state.md.us)> <[jlewis@oag.state.md.us](mailto:jlewis@oag.state.md.us)><mailto:[jlewis@oag.state.md.us](mailto:jlewis@oag.state.md.us)>>;  
Cary Hansel <[Cary@hansellaw.com](mailto:Cary@hansellaw.com)><mailto:[Cary@hansellaw.com](mailto:Cary@hansellaw.com)>>  
Subject: Re: Hulbert v. Sgt. Pope, et al.

Thank you for confirming Bob. I will look forward to speaking with you at the meeting by phone on Thursday unless the motion has been filed.

Best regards,  
Ashton Zylstra

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From: Robert A. McFarland -DNR- <[roberta.mcfarland@maryland.gov](mailto:roberta.mcfarland@maryland.gov)><mailto:[roberta.mcfarland@maryland.gov](mailto:roberta.mcfarland@maryland.gov)>>  
Sent: Tuesday, January 28, 2020 1:06:58 PM  
To: Ashton Zylstra <[azylstra@hansellaw.com](mailto:azylstra@hansellaw.com)><mailto:[azylstra@hansellaw.com](mailto:azylstra@hansellaw.com)>>  
Cc: John Fredrickson -DGS- <[john.fredrickson@maryland.gov](mailto:john.fredrickson@maryland.gov)><mailto:[john.fredrickson@maryland.gov](mailto:john.fredrickson@maryland.gov)>>;  
[jlewis@oag.state.md.us](mailto:jlewis@oag.state.md.us)<mailto:[jlewis@oag.state.md.us](mailto:jlewis@oag.state.md.us)> <[jlewis@oag.state.md.us](mailto:jlewis@oag.state.md.us)><mailto:[jlewis@oag.state.md.us](mailto:jlewis@oag.state.md.us)>>;  
Cary Hansel <[Cary@hansellaw.com](mailto:Cary@hansellaw.com)><mailto:[Cary@hansellaw.com](mailto:Cary@hansellaw.com)>>  
Subject: Re: Hulbert v. Sgt. Pope, et al.

All,

I will be available by phone on Thursday, January 30th for the discovery conference unless Jim and I have filed a Motion to substitute counsel for Sgt. Pope. I am in the process of drafting a joint motion for Jim and I to sign and either I or Jim will file with the Court.

On Tue, Jan 28, 2020 at 12:49 PM Ashton Zylstra <[azylstra@hansellaw.com](mailto:azylstra@hansellaw.com)><mailto:[azylstra@hansellaw.com](mailto:azylstra@hansellaw.com)>> wrote:  
Dear John,

Of course we are communicating in good faith and hope to work towards a fair and efficient resolution of all outstanding discovery issues, including but not limited to the scheduling of this meeting. However, as we have stated from the outset and continually reiterated, such as in Cary's email in the chain below from Friday and in our conversation on the phone this morning, while we have no objection to Jim's participation--or Rob's, if he was available



at the scheduled time--we must meet with all counsel that have entered appearances.

As Cary noted on Friday, Bob still has an appearance entered for his client and no other lawyer has officially entered an appearance. While we understand the intent to have Jim replace Bob at some point in the future, until that occurs Bob has resulting obligations to his client and has agreed to appear at this discovery meeting by phone. I have not heard anything further from Bob indicating that this has changed and he is no longer willing to appear on behalf of his client.

With that in mind, in a good faith effort to attempt to resolve this issue, we are willing to leave the meeting at the rescheduled time of Thursday, January 30th at 2:00 pm at your office, to be attended in person by you and me, with Bob to appear by phone and Jim to appear, if he chooses to attend, either in person or by phone. If the motion is filed to exchange Bob's appearance with Jim's prior to the meeting, we have no problem proceeding with Jim alone. If the motion is not filed by that time, we must insist on Bob's appearance by phone.

Best regards,  
Ashton Zylstra

-----Original Message-----

From: John Fredrickson -DGS- <[john.fredrickson@maryland.gov](mailto:john.fredrickson@maryland.gov)<mailto:[john.fredrickson@maryland.gov](mailto:john.fredrickson@maryland.gov)>>

Sent: Tuesday, January 28, 2020 12:33 PM

To: Ashton Zylstra <[azylstra@hansellaw.com](mailto:azylstra@hansellaw.com)<mailto:[azylstra@hansellaw.com](mailto:azylstra@hansellaw.com)>>

Cc: Robert A. McFarland -DNR- <[roberta.mcfarland@maryland.gov](mailto:roberta.mcfarland@maryland.gov)<mailto:[roberta.mcfarland@maryland.gov](mailto:roberta.mcfarland@maryland.gov)>>;

[jlewis@oag.state.md.us](mailto:jlewis@oag.state.md.us)<mailto:[jlewis@oag.state.md.us](mailto:jlewis@oag.state.md.us)>>; Cary Hansel

<[Cary@hansellaw.com](mailto:Cary@hansellaw.com)<mailto:[Cary@hansellaw.com](mailto:Cary@hansellaw.com)>>

Subject: Re: Hulbert v. Sgt. Pope, et al.

Ashton: I prefer not to note corrections or to negotiate terms for a meeting between counsel. I prefer instead that we communicate in good faith and that all counsel work together to be fair and efficient. Although I have no part to play regarding your interpretations of the rules or other perceived requirements, you likewise, cannot enforce your interpretations on the defendants, their representatives or others involved in discovery. I look forward to meeting with you on Thursday and we will make every effort to resolve any discovery concerns. Up to this point both sides have worked well together and have cooperated on all discovery issues. I see no reason why we cannot continue in the same fashion.

Best,

dictate who the parties

John C. Fredrickson

Assistant Attorney General

Maryland Department of General Services

300 W. Preston Street, Room 608

Baltimore, Maryland 21201

Telephone Number: (410) 767-1825

On Tue, Jan 28, 2020 at 12:08 PM Ashton Zylstra <[azylstra@hansellaw.com](mailto:azylstra@hansellaw.com)<mailto:[azylstra@hansellaw.com](mailto:azylstra@hansellaw.com)>>

>

> Dear John,

>

> Yes, we discussed Jim's availability and agreed that he could participate by phone if he was not available to meet in person. We did discuss Rob not being available to for this discussion, and I reiterated our position that we only need to



have counsel representing parties participating in the discovery meeting.

>  
> In terms of Jim's appearance, I did also reiterate during the discussion that our understanding of the rules requires us to meet with all current counsels of record. I asked you to clarify twice during the phone conversation if the exchange would occur prior to the rescheduled Thursday meeting, and upon your confirmation that it would occur and at that point Jim would be the official counsel of record instead of Bob, I agreed to postpone the meeting to permit Jim to participate in Bob's stead.

>  
> If Jim is not going to be the official counsel of record during that rescheduled meeting time, then we will need to have Bob participate as the current counsel of record. We have no issues with Jim participating as well if he so chooses, but Bob will also need to be on the line. If that is the case, our preference would be to still meet at the previously scheduled time of 2:00pm today, as my understanding from our conversation was that the rescheduling was solely to accommodate Jim's schedule.

>  
> Best regards,  
> Ashton Zylstra

>  
> -----Original Message-----  
> From: John Fredrickson -DGS- <[john.fredrickson@maryland.gov](mailto:john.fredrickson@maryland.gov)><mailto:[john.fredrickson@maryland.gov](mailto:john.fredrickson@maryland.gov)>>  
> Sent: Tuesday, January 28, 2020 11:59 AM  
> To: Ashton Zylstra <[azylstra@hansellaw.com](mailto:azylstra@hansellaw.com)><mailto:[azylstra@hansellaw.com](mailto:azylstra@hansellaw.com)>>  
> Cc: Robert A. McFarland -DNR- <[roberta.mcfarland@maryland.gov](mailto:roberta.mcfarland@maryland.gov)><mailto:[roberta.mcfarland@maryland.gov](mailto:roberta.mcfarland@maryland.gov)>>;  
> [jlewis@oag.state.md.us](mailto:jlewis@oag.state.md.us)<mailto:[jlewis@oag.state.md.us](mailto:jlewis@oag.state.md.us)>>; Cary Hansel  
> <[Cary@hansellaw.com](mailto:Cary@hansellaw.com)><mailto:[Cary@hansellaw.com](mailto:Cary@hansellaw.com)>>  
> Subject: Re: Hulbert v. Sgt. Pope, et al.

>  
> Ashton: I note the following corrections regarding your summary of our discussion: 1) We did not agree that Jim's appearance will be "officially filed prior to the rescheduled meeting,". I informed you that it was Jim's intent to enter his appearance soon. 2) We did not agree that Jim would participate in person. I pointed out that I do not control Jim's schedule and that I would ask if he could participate in person. Otherwise, I understand that Jim will be available to participate by telephone. 3) I informed you that Rob Scott was still in trial and may not be able to participate on 1/29.

>  
> Best,  
>  
>  
> John C. Fredrickson  
> Assistant Attorney General  
> Maryland Department of General Services  
> 300 W. Preston Street, Room 608  
> Baltimore, Maryland 21201  
> Telephone Number: (410) 767-1825

>  
>  
>  
> On Tue, Jan 28, 2020 at 11:09 AM Ashton Zylstra <[azylstra@hansellaw.com](mailto:azylstra@hansellaw.com)><mailto:[azylstra@hansellaw.com](mailto:azylstra@hansellaw.com)>> wrote:

>>  
>> Dear John,  
>>  
>> Thank you for touching base by phone this morning. Our understanding is that Jim will be replacing Bob as official counsel of record in the next day or two, and so we rescheduled the discovery meeting for Thursday, January 30th at 2:00pm at your office to permit Jim to participate in Bob's stead. We agreed to reschedule on the basis that Jim's



appearance will be officially filed prior to the rescheduled meeting, so please let us know if anything arises that delays the exchange.

>>

>> Best regards,

>> Ashton Zylstra

>>

>> -----Original Message-----

>> From: Ashton Zylstra

>> Sent: Monday, January 27, 2020 11:01 AM

>> To: 'John Fredrickson -DGS-' <[john.fredrickson@maryland.gov](mailto:john.fredrickson@maryland.gov)<mailto:[john.fredrickson@maryland.gov](mailto:john.fredrickson@maryland.gov)>>;

>> 'Robert A. McFarland -DNR-' <[roberta.mcfarland@maryland.gov](mailto:roberta.mcfarland@maryland.gov)<mailto:[roberta.mcfarland@maryland.gov](mailto:roberta.mcfarland@maryland.gov)>>

>> Cc: Cary Hansel <[Cary@hansellaw.com](mailto:Cary@hansellaw.com)<mailto:[Cary@hansellaw.com](mailto:Cary@hansellaw.com)>>;

>> '[jlewis@oag.state.md.us](mailto:jlewis@oag.state.md.us)<mailto:[jlewis@oag.state.md.us](mailto:jlewis@oag.state.md.us)>'

>> <[jlewis@oag.state.md.us](mailto:jlewis@oag.state.md.us)<mailto:[jlewis@oag.state.md.us](mailto:jlewis@oag.state.md.us)>>

>> Subject: RE: Hulbert v. Sgt. Pope, et al.

>>

>> Bob, thank you for speaking with me this morning.

>>

>> John, Bob confirmed that he is available to call in for a discovery meeting on Tuesday at 2pm or anytime on Thursday. As you indicated on Friday that you are available tomorrow afternoon, would holding a meeting at your office (with Bob to call in) at 2pm tomorrow work for you?

>>

>> Jim, I am looping you in at Bob's request. It is our understanding that you will be replacing Bob on this case in the next couple of weeks.

>>

>> Best regards,

>> Ashton Zylstra

>>

>> -----Original Message-----

>> From: Ashton Zylstra

>> Sent: Friday, January 24, 2020 5:08 PM

>> To: John Fredrickson -DGS- <[john.fredrickson@maryland.gov](mailto:john.fredrickson@maryland.gov)<mailto:[john.fredrickson@maryland.gov](mailto:john.fredrickson@maryland.gov)>>; Robert

>> McFarland -DGS- <[robert.mcfarland@maryland.gov](mailto:robert.mcfarland@maryland.gov)<mailto:[robert.mcfarland@maryland.gov](mailto:robert.mcfarland@maryland.gov)>>

>> Cc: Cary Hansel <[Cary@hansellaw.com](mailto:Cary@hansellaw.com)<mailto:[Cary@hansellaw.com](mailto:Cary@hansellaw.com)>>

>> Subject: RE: Hulbert v. Sgt. Pope, et al.

>>

>> Dear John and Bob,

>>

>> I am available anytime on either Tuesday, January 28th and Thursday, January 30th. Bob, is there a time that works best for you to call in on either of those dates?

>>

>> Best regards,

>> Ashton Zylstra

>>

>> -----Original Message-----

>> From: Cary Hansel <[Cary@hansellaw.com](mailto:Cary@hansellaw.com)<mailto:[Cary@hansellaw.com](mailto:Cary@hansellaw.com)>>

>> Sent: Friday, January 24, 2020 4:52 PM

>> To: John Fredrickson -DGS- <[john.fredrickson@maryland.gov](mailto:john.fredrickson@maryland.gov)<mailto:[john.fredrickson@maryland.gov](mailto:john.fredrickson@maryland.gov)>>; Ashton

>> Zylstra <[azylstra@hansellaw.com](mailto:azylstra@hansellaw.com)<mailto:[azylstra@hansellaw.com](mailto:azylstra@hansellaw.com)>>

>> Cc: Robert McFarland -DGS- <[robert.mcfarland@maryland.gov](mailto:robert.mcfarland@maryland.gov)<mailto:[robert.mcfarland@maryland.gov](mailto:robert.mcfarland@maryland.gov)>>

>> Subject: RE: Hulbert v. Sgt. Pope, et al.

>>



> > John, thank you for providing dates.

> >

> > Bob still has an appearance entered for his client in this case and no other lawyer has entered an appearance. Pursuant to the resulting obligations Bob has to his client in this case, Bob has graciously agreed to meet by phone and we have consented to his request.

> >

> > As for the Lt. Governor's lawyer, while I have no objection to his presence, he has apparently ignored your requests for dates. Further, the rules and Court's order require only that we confer with counsel for the parties, and the Lt. Governor is not currently a party to this case.

> >

> > Ashton will coordinate with Bob and be in touch to choose one of the dates you have provided.

> >

> > Best regards,

> >

> > Cary

> >

> >

> > -----Original Message-----

> > From: John Fredrickson -DGS- [mailto:[john.fredrickson@maryland.gov](mailto:john.fredrickson@maryland.gov)<mailto:[john.fredrickson@maryland.gov](mailto:john.fredrickson@maryland.gov)>]

> > Sent: Friday, January 24, 2020 4:28 PM

> > To: Cary Hansel <[Cary@hansellaw.com](mailto:Cary@hansellaw.com)<mailto:[Cary@hansellaw.com](mailto:Cary@hansellaw.com)>>; Ashton Zylstra

> > <[azylstra@hansellaw.com](mailto:azylstra@hansellaw.com)<mailto:[azylstra@hansellaw.com](mailto:azylstra@hansellaw.com)>>

> > Subject: Hulbert v. Sgt. Pope, et al.

> >

> > My concern, as you are aware, is that I cannot respond to concerns you have about discovery from the Lt. Gov. Also, if the OAG designates an attorney to replace Bob, we need the new attorney to respond for discovery issues related to Sgt. Pope. In view of those issues, if Ashton would like to meet next week I am presently available on Tuesday p.m. and most times on Thursday. Please let me know your preference.

> >

> > In the meantime, have a great weekend.

> >

> > Best,

> >

> > John C. Fredrickson

> > Assistant Attorney General

> > Maryland Department of General Services

> > 300 W. Preston Street, Room 608

> > Baltimore, Maryland 21201

> > Telephone Number: (410) 767-1825

--

Robert A. McFarland, Esquire

Assistant Attorney General

Department of Natural Resources

580 Taylor Avenue, C-4

Annapolis, Maryland 21401

Tel: (410) 260-8357

Fax: (410) 260-8364



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